



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-32-10 et seq.
Regulation title	Virginia Pollution Abatement Permit Regulation
Action title	Amend the Virginia Pollution Abatement (VPA) permit regulation related to Animal Feeding Operations (AFOs)
Date this document prepared	June 1, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to amend the Virginia Pollution Abatement (VPA) permit regulation in order to facilitate consistency with the other regulations which governs the pollutant management activities at Animal Feeding Operations (AFOs). The VPA permit regulation governs the pollutant management activities of animal wastes at AFOs. The VPA permit regulation contains obsolete definitions which are not consistent with the existing general permit for AFOs as well as related federal definitions. The amendments and reissuance of the VPA General Permit Regulation for Animal Feeding Operations (AFOs) will be covered by a concurrent NOIRA.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include (i) a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary.

Virginia Code §62.1-44.15.(5) authorizes the State Water Control Board to permit the management and discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; and the alteration otherwise of the physical, chemical or biological properties of state waters. The Virginia Pollution Abatement Regulation defines the procedures and requirements to be followed in connection with VPA permits issued by the Board pursuant to the State Water Control Law.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The VPA permit regulation contains obsolete definitions which are not consistent with the existing general permit for AFOs as well as related federal definitions. Specific terms and definitions need to be consistent among all State Water Control Board regulations which address AFOs. The VPA permit regulation must be amended in order to maintain consistency among the regulations which govern AFOs.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

This action will amend the VPA permit regulation in order to bring consistency to the regulations which govern AFOs. Significant changes are not expected; however, the following items will be considered in the development of a regulatory proposal:

1. This regulatory action will amend definitions and terms used in the VPA permit regulation, including "concentrated confined animal feeding operation" and "confined animal feeding operation" in order to bring consistency to the State Water Control Board regulations which govern AFOs.
2. Other amendments to the VPA permit regulation related to AFOs may be considered by the Board based on comments received in response to this notice and discussions of the technical advisory committee.

The concurrent NOIRA to amend the VPA General Permit Regulation for Animal Feeding Operations (AFOs) will address similar amendments.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

One alternative is to not amend the VPA permit regulation. However, not amending the VPA permit regulation may broaden the differences between the regulations which govern the AFOs thereby increasing the possibility of inconsistencies between the requirements in the general permit and the individual permit. The amendments are necessary to obtain consistency among the regulations which govern AFOs. The Department will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone 804-698-4059, fax 804-698-4032 and betsy.bowles@deq.virginia.gov**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public hearing at proposed stage

A public hearing will not be held after publication of the proposed stage of the regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Technical advisory committee

A technical advisory committee will be involved in the development of the proposed regulation.

Due to the need for consistency between the regulations which govern activities at AFOs, the Board will utilize the technical advisory committee that is established in response to the concurrent NOIRA for the VPA General Permit Regulation for Animal Feeding Operations (AFOs).

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that an amendment to this regulation will have any impacts on the family and family stability.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

AFO - Animal Feeding Operations

300 A.U. - "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

VPA - Virginia Pollution Abatement